



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO 298 OF 2017

KAMONGO FARMERS CO-OPERATIVE SOCIETY LTD.....PLAINTIFF

-VERSUS-

CHIEF LAND REGISTRAR & 9 OTHERS.....DEFENDANTS

RULING

The Application before me is the Notice of Motion dated 11th June, 2018 which was brought under Section 1A, 1B and 3A of the Civil Procedure Act and under order 51 of the Civil Procedure Rules. The Applicant seeks for an order for review or variation of a ruling delivered by this court on 11th April, 2018 striking out the suit against the 5th Defendant.

The Application was based on the grounds that though counsel for the applicant was aware about the date by which submissions were to be filed she was taken ill and did not file submissions on time and the suit against the 5th Defendant was struck out and it was because of the Advocates deteriorating health that the Applicants submissions were not filed.

The Application was supported by the Affidavit sworn by Ms Susan Kibungi Advocate in which she deponed by way of averments the reasons leading to her inability to file submissions on time. To the affidavit she also attached a copy of a medical report.

In the affidavit Ms Kibungi depones that it was her health that caused the delay. She asked the court to invoke the provisions of Article 159 of the constitution to vary the ruling in the interest of justice.

The application was opposed by the 5th Defendant by way of a replying affidavit. In the replying affidavit the respondent averred that the court had granted the parties ample time within which to file their submissions and further that though he sympathized with the condition of health of counsel for the applicant, he took issue with the medical report that was authorized on the 11th April, 2018 on the date the ruling was delivered and no explanation was offered for the anomaly. The respondent further deponed that the law firm representing the applicant has four other advocates and no explanation was given why no other advocate could handle the matter.

When the application came up for hearing the same was disposed off by way of submissions and at this stage what is there for the court to make determination is whether the court should exercise its discretion to vary and/or review its order made on 11th April, 2018.

The applicable law in granting for order for review and variation is contained in section 80 of order 45 of Civil Procedure Rules and the court must satisfy itself that the conditions set out therein are met by a party.

The Applicant in his submission has correctly invoked the provision of section 80 and order 45 of the Civil Procedure Rules. The conditions are thus the discovery of important evidence which was not within the knowledge of the applicant. The order was made on account of a mistake or there is an error on the face of the record.

The Respondent in his submissions pointed out that the application is fatally defective as the affidavit in support of the application was sworn by an advocate who did not have authority to swear the same. The respondent in his submission further pointed out that there was inordinate delay in applying for review since the ruling was delivered on 11th April, 2018 and the application was made on 18th June, 2018.

I have read the application before me and the submissions filed by counsel for the parties and it is my finding that the applicant has not satisfied the grounds set out under order 45 of the Civil Procedure Rules for grant of orders of review.

The Applicant has not shown what new material evidence they have discovered and what error was apparent on the face of the record. The only reason adduced was that they delayed in the filing of submissions on account of the advocates and further to the above the applicant took about 2 months to mount the instant application and they have not explained why there was this delay and because of this I find that the Applicant has filed their application late in the day.

From the above I find that the application for review has no merit and I therefore I dismiss the same.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of September, 2018

Mohammed Noor Kullow

Judge

26/9/18

In the presence of:-

Ms Seika holding brief for Nyakora for Attorney General for 1st, 2nd, 4th Defendant

Mr. Kambo holding brief for Mr. Kabue for 5th Defendant

CA:Chuma